

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 378 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HIRA TULSIBHAI GOSWAMI

Versus

STATE OF GUJARAT

Appearance:

MR MH BAREJIA for Petitioner

PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/05/98

ORAL JUDGEMENT

1. Heard Ld.Advocate Mr.Barejia appearing for petitioner. Rule. Ld.APP Mr.A.J.Desai waives service of rule on behalf of the respondent-State. With the consent of parties matter is finally heard today.

2. The petitioner is an accused in Sessions Case No.224/97 pending for further trial in Court No.23, City

Sessions Court, Ahmedabad. The said case has been initiated for offence registered against the present petitioner at Bapunagar PS under Cri.Reg.No.I 233/96 for the offences made punishable under sections 302 and 114 of IPC. The petitioner has challenged the legality, validity and propriety of the order passed by the Ld.Addl.City Sessions Judge, Court No.23, Ahmedabad dated 16.4.98 below Exhs 37 & 42 of Sessions Case No.224/97.

3. The Ld.advocate appearing for the petitioner has contended that the prosecution has examined eye witness--Laxmiben, Wd/o deceased Gangaram who has died in the said incident. That after the crossexamination of said witness--Laxmiben the Ld.advocate for the petitioner--accused had learnt that on account of inadvertence some material questions could not be put to the witness and thereby applications-Exhs 37 & 42 were moved under section 311 of Cr.P.C.to recall the said witness-Laxmiben for further crossexamination. That the Ld.Additional City Sessions Judge, Court No.23, Ahmedabad has heard and rejected both the applications vide impugned order 16.4.98, and hence the present petition.

4. Shri Barejia has further submitted that as per the statement of witness--Laxmiben produced at running page 24 of the compilation it is necessary to put two questions as suggested in Exh.37 for just decision of the case and similarly in order to establish contradiction in the deposition of said witness-Laxmiben it is necessary to put questions as submitted in application-Exh.42. That right to crossexamine the material eye witness is a substantial right of the accused and the Ld.Addl.City Sessions Judge having rejected the application to recall the eye witness for crossexamination has caused great prejudice to the defence which is likely to result into miscarriage of justice.

5. Ld.APP-Mr.A.J.Desai has vehemently objected the prayer made by the petitioner contending that the questions suggested on behalf of the petitioner are mere omissions. That the petitioner desires to prolong the proceedings of the trial and thereby such frivolous application has been moved which can not be granted in the facts and circumstances of the case.

6. I have carefully gone through the police statement and deposition of the material witness-Laxmiben who is examined in Sessions Case No.224/97 copy which are produced at page Nos 24 to 38 of the compilation. In my opinion in the facts and circumstances of the present case the Ld.Additional City Sessions Judge, Court No.23,

Ahmedabad ought to have granted the application of the accused Exhs 37 & 42 in the interest of justice. As a result, I hold that the petition is required to be allowed and the Ld.Additional City Sessions Judge, Court No.23, Ahmedabad is required to be given necessary directions. Hence, petition is allowed. The impugned order, dated 16.4.98 passed by the Ld.Additional City Sessions Judge, Court No.23, Ahmedabad passed below Exhs 37 & 42 is hereby set aside and quashed and the Ld.Additional City Sessions Judge, Court No.23, Ahmedabad is hereby directed to recall the eye witness-Laxmiben, Wd/o deceased Gangaram for further crossexamination by the present petitioner-accused. That the petitioner shall be permitted to put only two questions as suggested in Exh.37 and few questions as suggested in Exh.42 during the crossexamination of the witness. Petitioner is also directed not to claim any unnecessary adjournment to prolong the trial. Rule is made absolute accordingly. No costs. Interim relief granted earlier stands vacated.

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